

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICHARD A. DALZELL,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner,  
Social Security Administration,

Defendant.

Case No. C06-1333RSL

ORDER DISMISSING CASE

The Court, having reviewed the Report and Recommendation (Dkt. #19) of the Honorable Monica J. Benton, United States Magistrate Judge, plaintiff's objections to the Report and Recommendation (Dkt. #20), defendant's response to plaintiff's objections (Dkt. # 21), and the remainder of the record, hereby finds and orders as follows:

- (1) The Court adopts the Report and Recommendation.
- (2) The Court finds that the Administrative Law Judge's decision contains no legal error and is supported by substantial evidence in the record. Accordingly, the Court rejects, as without merit, the issues raised by plaintiff's objections to the Report and Recommendation:
  - (a) The Court finds that the Administrative Law Judge ("ALJ") did not err in according the non-examining physician's opinion greater weight than the treating physician's opinion. In determining the proper weight to give to

1 each opinion, the ALJ relied on substantial evidence in the record,  
2 including the inconsistencies within the treating physician's report and  
3 plaintiff's own testimony about his activities.

4 (b) In giving little weight to the opinion of one examining psychiatrist, Susan  
5 Hakeman, M.D., in favor of the opinions of psychologists Carl Epp, Ph.D.  
6 and Allan Fitz, Ph.D., the ALJ provided a specific and legitimate reason  
7 supported by substantial evidence. The ALJ explained that Dr. Hakeman's  
8 assessment relied "solely on the claimant's subjective complaints" (TR 24).  
9 Although plaintiff points to Dr. Hakeman's mention that "testing showed  
10 memory loss" as evidence to the contrary, there is no other indication of  
11 any scientific assessment by Dr. Hakeman (TR 352). In contrast, Dr. Epp  
12 and Dr. Fitz reported detailed results from several cognitive tests (TR 308-  
13 309, 473, 486-487), thereby supporting a determination that their  
14 assessments merited greater weight.

15 (c) The ALJ was correct in finding that the panic disorder did not meet the  
16 requirements of step two of the disability evaluation as provided by Social  
17 Security regulations. See 20 C.F.R. § 416.920(a)(4)(ii) (requiring a  
18 medically severe impairment or medically severe combination of  
19 impairments). Plaintiff bears the burden of proof. Plaintiff failed to  
20 demonstrate clearly that his panic disorder would limit his basic work  
21 activities beyond the impaired social functioning accounted for by the ALJ.


22 (d) The ALJ properly determined plaintiff's residual functional capacity  
23 ("RCF") under step four and plaintiff's ability to perform other work that  
24 exists in significant numbers in the national economy under step five. See  
25 20 C.F.R. § 416.920(a)(4)(iv-v). The ALJ determined that plaintiff cannot  
26 perform his past relevant work because his RCF is at a sedentary level of  
27 physical exertion. The ALJ deemed the plaintiff capable of lifting or

1 carrying a maximum of ten pounds, standing or walking at least two hours,  
2 and sitting approximately six hours during an eight-hour work day with  
3 normal breaks. The ALJ noted the plaintiff's limited abilities to interact  
4 with co-workers or the public. The ALJ determined that plaintiff can  
5 follow simple instructions. In accordance with step five, the ALJ found that  
6 several types of employment fit plaintiff's abilities and exist in significant  
7 numbers nationally. The ALJ's decision that the listed types of sedentary  
8 employment would satisfy the RCF determination is supported by  
9 substantial evidence in the record.

10 (3) For all of the foregoing reasons, the final decision of the Commissioner is  
11 AFFIRMED, and this action is DISMISSED with prejudice. The Clerk of Court is  
12 directed to enter judgment accordingly.

13 (4) The Clerk shall send a copy of this Order to the parties and to the Honorable  
14 Monica J. Benton.

15 DATED this 4th day of February, 2008.

16  
17  
18 

19 Robert S. Lasnik  
20 United States District Judge  
21  
22  
23  
24  
25  
26  
27